17

$~64 and 65

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 1818/2012**

UNION OF INDIA ..... Petitioner

Through: Mr. M.K. Bhardwaj, Advocate.

versus

SARITA BALI ..... Respondent

Through: Mr. Prateek Tushar Mohanty, Advocate with Respondent in person.

\+ **W.P.(C) 10184/2016**

SARITA BALI ..... Petitioner

Through: Mr. Prateek Tushar Mohanty, Advocate with Respondent in person.

versus

UNION OF INDIA AND ANR ..... Respondents

Through: Mr. M.K. Bhardwaj, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

% **05.02.2020**

1. These are two petitions directed against the same impugned order dated 21st October, 2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') in OA No. 2894/2011, filed by Ms. Sarita Bali. The first petition W.P.(C) 1818/2012 is by the Union of India through the

Signature Not Verified
Signing Date:21.10.2024 16:49:41
Certify that the digital and physical file have been compared and the digital data is as per the physical file and no page is missing.

Ministry of External Affairs ('MEA'), while the second petition W.P.(C) 10184/2016 is by Ms. Sarita Bali.

2. The background facts are that Ms. Sarita Bali (hereinafter referred to as 'the Petitioner') was inducted in the Indian Foreign Service ('IFS') in 1974. The entire 1974 batch of IFS was promoted to Grade-III in 1992, Grade-II in 2004 and Grade-I in 2007. The requisite benchmark for promotion at the relevant times to all three Grades was "very good".

3. On 7th August 2003, a review DPC was held to consider the case of the Petitioner for promotion to Grade-III along with her batchmates. Subsequently, on 15th March 2004, a notification was issued granting her promotion to Grade-III of IFS from 8th October, 1992 on notional basis and "with effect from the forenoon of 9th February, 2004 on actual basis".

4. As far as the Petitioner's batchmates were concerned, the regular DPC for promoting them to Grade-II was held on 8th August, 2003 and the orders in that regard were issued in February, 2004. The Petitioner then represented that she should also be given promotion to Grade-II with effect from 2004.

5. It may be noticed here that as far as her batch was concerned, the DPC to consider promotions to Grade-I was held in November, 2006 and orders promoting her batchmates as Grade-I officers were issued in March, 2007.

6. Pursuant to her representation, a regular DPC to consider the Petitioner's promotion to Grade-II was held on 28th September, 2006 and the order

granting her promotion to Grade-II with effect from the forenoon of 1st February, 2008 was issued on 4th February, 2008. However, in the said order, her promotion to Grade-II was not antedated to the date on which her batchmates were granted promotion to the said Grade.

7. The case of the MEA is that since the Petitioner had not completed the prescribed minimum period of service in Grade-III and Grade-II, respectively, there were no grounds to antedate her promotion. The further case is that they had considered the Petitioner's case for promotion to Grade-I in 2009 but that the Appointment Committee of Cabinet ('ACC') had turned down her representation as well as the recommendations of the MEA.

8. The Court's attention has been drawn to a letter of the Department of Personnel and Training ('DoPT') dated 20th January, 2010 addressed to the MEA in response to its letter dated 13th November, 2009 on the representation from the Petitioner. The instructions issued to the MEA read as under:

> "2. Review of the DPC for Grade II held in August, 2003 and of DPC for Grade I held in Nov. 2006 is required as the promotion of Ms. Bali has already been antedated for Group-III. Review DPC should make its recommendation based on the yardstick/benchmark criteria as were applicable for the original DPC. The ACRs which were expunged earlier by ACC as conveyed by communication No. 8/5/2000/EC/SM.II dated 16 .1.2003 should be ignored by Review DPC.
>
> 3. The Estt. Division of DOP&T has also opined the following:
>
> (a) For the period 2006-07, the remarks of reviewing officer that her performance should be reviewed again before a decision on

whether to consider her for promotion is taken, has adverse tone whereas it has been certified incorrectly that this report does not contain adverse remarks. Similarly, in the ACR fir 2007-08, the reviewing officer could have brought out the short coming/deficiencies when he did not agree with the grading given by the Reporting Officer (DOP& T OM No. 21 011/1/ 2005 -Estt. (A) dated 06. 01.2010 also refers-copy enclosed).

(b) The ACR for 2000-01 by Shri J.C. Sharma has to be ignored which is also apparent from the earlier ACC decision by Communication No. 8/3-05/EO/SM-II dated 17.2.2006.

(c) When approving her promotion to Grade-III of IFS the ACC had observed that:
"Her ACRs for the period Feb-December 1985 and for the years 1981, 1982, 1983 rate the officer as 'Excellent' and definitely place the officer well above their benchmark of 'Very Good' for promotion to Grade- III.""

9. In the rejoinder filed in this Court in W.P.(C) 1818/2012, the stand of the MEA was that there was a comprehensive proposal by the ACC to antedate her promotion to Grade-II with effect from the same date that her batchmates were promoted and antedate her Grade I promotion also on par with her batchmates. To quote the rejoinder affidavit (where the MEA ids the Petitioner and Sarita Bali is referred to as the respondent):

> "f)...The respondent herself has stated that a comprehensive proposal to antedate her promotion to Grade II and promotion to Grade I was recommended (emphasis in the original) by the Cabinet Secretary and the Home Minister and the External Affairs Minister as members of the ACC **was declined by PMO** (emphasis in the original) without giving any reasons on record. The petitioner is not privy to the reasons either. Therefore blaming the petitioner that 'reasoning for not allowing promotion in these cases by the petitioner on the basis of some factors which are not on record and not examined by

> the petitioner' is only a figment of imagination on the part of the respondent. Further, the respondent has also admitted that the 'petitioner has submitted before the Administrative Tribunal that the ACC reversed its decision on this issue, which is indicative of arbitrariness of the ACC'. It is, therefore, not understood that if it is the ACC which is arbitrary, then why is the petitioner being blamed? The Tribunal's conclusion about the correct fact and documents does not arise in the present case as the ACC's proposal for antedating the respondent's promotion to Grade-II and promotion to Grade I has been accepted by the petitioner..."

10. From the above stand of the MEA, it is apparent that both when the PMO declined the ACC's proposal and when ACC "reversed its decision", no reasons were provided. It is apparent that as far as the DPC that was convened for considering the case of the Petitioner for promotion was concerned, it had already recommended antedating both her promotions to Grade-II and Grade-I on par with her batchmates.

11. It is in the above circumstances that the Petitioner was constrained, after her representations bore no fruit, to file OA No. 2894/2011 in which, *inter alia*, she prayed as under:

> "1. To issue directions to the respondents to-
>
> a) Antedate the promotion of the applicant as Grade-II of the IFS w.ef. March, 2004 being the date when her immediate junior of the 1974 batch was granted such promotion by setting aside the review DPC of September 2010 which was held for antedating the promotion of the applicant to Grade-II even though there was no requirement in law for a review DPC, with consequential benefits including seniority and arrears of pay.

2r

2. Direct the respondents to promote the applicant to Grade-I of the IFS w.e.f. March 2007 when her immediate junior of her batch was promoted to Grade-I with all consequential benefits without the process of a further DPC. Alternatively, to promote the applicant to Grade-I of the IFS w.e.f.2009 as she had met the numerical benchmark of 84 for the panel year 2009-10 by ignoring the ACR of 2000-01, October, 2006-March, 2007, 2007-08 and ACRs which were expunged grading expunged by ACC and by including Excellent gradings in the ACR for the year 1981, 1982 and 1983 by ignoring ACRs which were expunged/grading expunged by ACC with all consequential benefits".

12. She also specifically pleaded in para 4.57 of the OA as under:

"4.57 It is the respectful submission of the applicant that even the review DPC for Grade-II is not required as the applicant already stands promoted to Grade-II in the month of February 2008. The respondents are only required to advance the date of promotion to the date from which officer junior to the applicant in her batch was promoted to Grade-II. In the past also i.e. while promoting the applicant to Grade-III the respondents have given effect to the promotion to the said grade, retrospectively. The same principle must follow for promotion to Grade-II also as the intention of the ACC to back date Grade-III was to ensure that the applicant is at par with her batchmates and that the same principal should be followed for future promotions as well. There is no reason why such principle should be deviated from in Grade-I more so the delay in holding a DPC is not attributable to the applicant. It may be necessary to submit here that there is no need to hold a review DPC as the ACC on the basis of the record had already approved the applicant's promotion to Grade-II. In other words when ACC had already assessed the record and approved promotion of the applicant, a review DPC cannot reassess the same record for advancing the promotion from back date".

13. As regards Grade-I, she further pleaded that she was "entitled to the

promotion automatically as the relevant record for promotion to Grade-I would be till 2005, which record has already been considered and assessed by the ACC while granting her promotion to Grade-II even though the record till 2004 was only relevant for Grade-II promotion. Further, the bench mark for Grade-I was at the time same as the bench mark for Grade-II i.e. "Very Good"." According to the Petitioner, the DoPT had directed the MEA "to convene a review DPC and consider the case of the applicant afresh consequent upon reconsidering her case for Grade-II with retrospective effect."

14. In reply to the aforesaid contentions, it is stated by the MEA in its counter affidavit filed before the CAT that pursuant to the above directions of the DoPT, a review DPC was held on 12th August, 2010 for considering the Petitioner's promotion to Grade-II and that she was declared "unfit" by the said DPC. The stand taken is that the DPC "enjoys full discretion to device their own methods and procedure for objective assessment of the suitability of candidates" and "should not be guided merely by the overall grading, if any, that may be recorded in the CRs".

15. In the rejoinder filed to the aforesaid counter affidavit, the Petitioner has pointed out that the DPC which met in August, 2010 had taken "irrelevant and extraneous factors into account" and ignored the previous ACC decision on her ACRs and the promotion already granted to her to Grade II.

16. In the impugned order, the CAT has accepted the above plea of the Petitioner and observed in para 12 as under:

> "12. It must be mentioned here that there was a DPC for promotion of the applicant to the Grade-III for the year 1992 which resulted in her retrospective promotion with effect from 1992 when the next junior officer of her batch was promoted and the ACC approved her retrospective promotion in February, 2004. This signifies that in the year 2004, the applicant's case has been properly considered by ACC for granting Joint Secretary level promotion w.e.f. 1992. This directly demonstrates that if her available ACRs could make her fit for IFS Grade-III, with the same set of ACRs her eligibility for consideration for promotion to the Grade-II i.e. Additional Secretary along with her batchmates for the year 2004 would have gone in her favour".

17. The CAT further observed in para 14 as under:-

> "14. Further careful scrutiny of her ACR details available in the respondent' s file would show that the applicant had grading of 'Very Good' or above gradings in her ACRs for the year 2001-02, 1982-83, 1981-82, 1980-81 and 1979-80. The bench mark for promotion was 'Very Good' I for Grade-II of IFS in the year 2003. The applicant, therefore, should have been graded 'fit' for promotion along with her 1974 batchmates in the DPC held in 2003 for IFS Grade-II posts."

18. The CAT agreed with the Petitioner in para 17 that "the appropriate available ACRs of the applicant have not been considered for her promotion to the rank of Secretary (IFS Grade-I), as a result of which, the marks secured by her being less than the desired bench mark, she could not be found fit".

19. However, the CAT took the view that there will have to be a review DPC "with officers, some of whom are junior to the applicant in IFS" which would take into account the "available and admissible ACRs" that had "not

been taken into account while calculating the marks to be allotted for considering her promotion to Grade I of IFS".

20. Mr. A.K. Bhardwaj, learned counsel for the MEA, drew the attention of the Court to affidavit dated 17th January, 2017 of the MEA filed in this Court in W.P.(C) 10184/2016 in which, *inter alia,* it is averred as under:

> "As such, the Petitioners are not opposed to the direction for holding a Review DPC to re-examine the Respondent's candidature, eligibility and fitness for consideration of promotion. However further action in this regard was not possible because of the condition imposed by the Hon'ble Tribunal that the members of such a Review DPC should not only be senior in rank but also in batch vis-a-vis the Respondent, which is not possible for the detailed reasons already provided by the Petitioners in WP. The Petitioner, therefore, would appeal to the Hon'ble Court for the quashing of the anomalous Order of the Hon'ble Tribunal, which is a technical pre-requisite for implementing the said order."

21. The only issue that remains to be considered is whether in fact there is a need to hold a review DPC to consider the case of the Petitioner for promotion to Grade-II and thereafter to Grade-I along with her batchmates?

22. As far as the question of promotion of the Petitioner to Grade-II along with her batchmates is concerned, the Court finds that there is already an order dated 4th February, 2008 by which she has been granted promotion to Grade-II. The only question is whether the date from which she should be granted such promotion should have been antedated at par with the date on which her batchmates were so promoted?

23. What becomes evident from the pleadings on record is that the benchmark of "very good" was the relevant benchmark to be considered for promotion to Grade-II, and that it was on this very basis that the Petitioner was found fit for promotion to Grade-II and a notification was issued on 4th February, 2008. All that was required to be done was to antedate that promotion to the date on which her batchmates were promoted, which for some reason, was not done. With this being the clear position, there would be absolutely no need to hold a review DPC. The exercise undertaken by the DPC held in 2010 is a futile one, insofar as the above promotion is concerned.

24. As far as the promotion of Petitioner to Grade-I is concerned, it is plain that the bench mark of "very good" has remained the same for that Grade as well. Had the DPC convened at the appropriate time to consider the case of the Petitioner, given that the Petitioner had already met the benchmark of "very good", there would have been no difficulty in considering the Petitioner's case along with her batchmates.

25. An issue is raised by Mr. Bhardwaj that the ACRs that would be considered for promotion to Grade-I are different from the ACRs for earlier promotions and that therefore a review DPC for Grade-I promotion would nevertheless be required. This Court has already extracted the portion of the rejoinder affidavit of the MEA where the MEA agrees with the assertion of the Petitioner that the case of the Petitioner for promotion to Grade-I had already been recommended by the Cabinet Secretary, the Home Minister and External Affairs Minister as members of the ACC and that it had been

declined by the PMO "without giving any reasons on record". With this being the case, the question of requiring another review DPC for reconsidering the promotion of Petitioner from Grade-II to Grade-I appears to this Court to be unnecessary.

26. Accordingly, the impugned order of the CAT inasmuch as it directs the MEA to hold a review DPC, is considered unnecessary, and to that extent, is set aside.

27. As a result of the above discussion, a direction is now issued to the MEA as well as the DoPT, to issue orders antedating the promotion of the Petitioner Ms. Sarita Bali to Grade-II as well as Grade-I to the dates on which her batchmates were so promoted and to rework her retiral benefits and pension on the basis of such dates. While Ms. Sarita Bali will not be entitled to arrears of pay, she will be paid the arrears of pension within 12 weeks from today, failing which simple interest at 9% per annum on the said sum will be payable for the period of delay.

28. For the aforementioned reasons, the W.P.(C) 1818/2012 filed by Union of India through the MEA is dismissed and W.P.(C) 10184/2016 filed by Ms. Sarita Bali is disposed of in above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 05, 2020
nk